UAE Supreme Court sets new test for tax dispute time limits (extensions)

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In a recent judgment, the Federal Supreme Court ruled that the time limits related to tax disputes do not necessarily commence when notification is issued – but rather require evidence of the receipt and fulfillment of knowledge of the taxpayer of that decision and its contents.

The Supreme Court judgment sets a new test for taxpayers who may have had issues in receiving reconsideration decisions from the Federal Tax Authority or decisions issued by the tax dispute resolution committees, and lost their rights to challenge before the Federal Courts.

Facts

The taxpayer had challenged a decision by the FTA through the reconsideration procedure.

The FTA issued the reconsideration decision to the email address that had been submitted as the notification address by the taxpayer in the reconsideration form.

The taxpayer had high-level security systems that restricted the receipt of the email containing the reconsideration decision.

The email containing the reconsideration decision was discovered after a few weeks from its issuance pursuant to follow-up by the taxpayer – at which point the FTA recommunicated the reconsideration decision.

The taxpayer filed their objection against the reconsideration decision within twenty weekdays thereafter.

The tax dispute resolution committee, the Federal Primary, and Appeals Court rejected addressing the dispute any further on the basis that the taxpayer should have filed their objection against the reconsideration decision within twenty weekdays of the original date the decision was issued.

Supreme Court Decision

The Supreme Court overturned the findings of the tax dispute resolution committee, and the lower Courts, and applied the principle of administrative law that governs fulfillment of knowledge of an administrative decision.

Administrative law is that which governs the relationship between the public and private sectors.

An administrative decision is a decision that is issued by a public/government agency.

The Supreme Court ordered that evidence of the notification with the reconsideration decision being issued does not necessarily suffice to trigger the twenty-weekday time limit to proceed to challenge the decision before the tax dispute resolution committee.

The Court reasoned based on principles of administrative law that require evidence of the taxpayer obtaining fulfillment of knowledge of the reconsideration decision and its contents to trigger the time limit.

Otherwise, the time limit remains unextinguished until such evidence is made.

The Supreme Court took this position notwithstanding that Article 30 of the Tax Procedures Law requires the time limit of twenty weekdays to file an objection with the tax dispute resolution committee to commence from the date of the

notification.

Significance and administrative law

The relationship of a taxpayer with the FTA is not a commercial relationship, but an administrative relationship, i.e. a relationship with a government entity arising from the responsibility of a person or company towards the government to comply with public responsibilities – such as paying tax.

Administrative relationships are governed by administrative law in the UAE – which is the overarching corpus of rules that govern tax disputes.

However, administrative law in the UAE is not codified (with the exception of Article 84 (bis) of the Civil Procedures Law). Otherwise, there is no single statute or legislation that governs administrative law.

Administrative law in the UAE is derived from authoritative case law and scholarly works.

The judgment by the Supreme Court is significant as it applies a principle of administrative case law in dominion to the tax legislation.

By doing so, taxpayers now have higher degrees of comfort in that their arguments and pleas to the judiciary in tax disputes are not delimited to the explicit wording of the law – but can expand beyond those parameters to incorporate rules of administrative law.

Extensive experience in administrative disputes, including tax disputes, lead to the taxpayer being in a stronger and more comprehensive position by incorporating into their defenses and arguments principles and jurisprudence that govern administrative disputes – that ultimately provide more grounds for the higher judiciary (such as the Supreme Court) to accept and overturn decisions by the lower Courts or the tax dispute

resolution committees.

Fulfillment of knowledge

Fulfillment of knowledge is one of the core principles in administrative law and essentially means that the decision reaches the knowledge of the person subject to that decision in a sure and certain way so that it does not leave room for doubt about the lack of their knowledge about the decision or its content.

The Federal Supreme Court affirmed prior that "*the fulfillment of knowledge with which the date of the annulment lawsuit opens, is that knowledge that surrounds the content of the administrative decision, its source, and the legal position established by it for the addressee of the decision or the person concerned with it.*"

(Federal Supreme Court, Case No. 423 of 2014)

The Abu Dhabi Court of Cassation also confirmed this as follows:

"Although the time limit for appealing administrative decisions is scheduled to apply from the date of publication of the administrative decision or the notification of the person concerned, and if the texts of the law have identified the fact of the announcement as a tool of knowledge of the contested administrative decision, however, given that it is not accepted for a presumption that the contested decision has reached the knowledge of the person concerned, jurisprudence and the judiciary in the field of administration are stable that certain knowledge of the administrative decision takes the place of publication and announcement, provided that it is certain fulfillment of knowledge, neither presumptive nor hypothetical when conclusive evidence is established in accordance with the requirements of the circumstances and nature of the dispute. Fulfillment of knowledge that includes all the contents of the decision and its performance, so that

it is possible for the person, by virtue of this knowledge, to determine his legal position in the decision. It indicates that it happened without being restricted to a certain means of proof, and the judiciary may verify the existence or non-existence of this presumption or that fact and assess the effect that can be arranged on it in terms of sufficiency or insufficiency of knowledge…:"

(Abu Dhabi Court of Cassation, Case No. 13 of 2013)

And more recently by the Federal Supreme Court where the Court stated:

"While it was stipulated by the text of Article 84 bis of the Civil Procedure Code and what was done by the judiciary of this court that the beginning of the deadline for the right to appeal against administrative decisions starts from the date of publication or announcement of the decision or from the date on which the addressee's knowledge of the decision is proven with a certain knowledge of the content of the decision in a way that enables him to determine his position towards it, and this knowledge is proven from any valid fact or presumption that it took place…"

(Federal Supreme Court, Appeal No. 210 of 2017)

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